

**FEDERAL COMMUNICATIONS COMMISSION**  
**Enforcement Bureau**  
**Market Disputes Resolution Division**  
**445 12<sup>th</sup> St., S.W.**  
**Washington, D.C. 20554**

April 23, 2019

Copies sent by e-mail

## NOTICE OF COMPLAINT

BellSouth Telecommunications, LLC  
d/b/a AT&T Alabama,

Complainant,

V.

Alabama Power Company,

Defendant.

Proceeding Number 19-119  
Bureau ID Number EB-19-MD-002

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### Counsel for Complainant

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### Counsel for Defendant

Dear Counsel:

On April 22, 2019, BellSouth Telecommunications, LLC, d/b/a AT&T Alabama, (AT&T) filed with this Commission a complaint against Alabama Power Company (Alabama Power) under Section 224 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 224.<sup>1</sup> Alabama Power should have a copy of the Complaint as served by hand by AT&T. *See* 47 CFR § 1.734(c). If that is not the case, Alabama Power should immediately contact Commission counsel.

<sup>1</sup> Pole Attachment Complaint, Proceeding No. 19-119, Bureau ID No. EB-19-MD-002 (filed Apr. 22, 2019) (Complaint).

Lia Royle and I are Commission counsel for this proceeding. My phone number is (202) 418-7336, and my e-mail address is rosemary.mcenery@fcc.gov. Lia's phone number is (202) 418-7391, and her e-mail address is lia.royle@fcc.gov.

This letter outlines the procedural rules relevant to this case and establishes a schedule for the proceeding. We will conduct this proceeding in accordance with the Commission's rules governing Section 224 complaint proceedings, which are found at 47 CFR §§ 1.720-1.740, 1.1401 to 1.1414.<sup>2</sup>

### **Schedule for this Proceeding**

The schedule for this proceeding is below. All filings must comply with the Commission's complaint rules and with this Notice.<sup>3</sup>

1) By **May 22, 2019**, Alabama Power must file and serve an answer to the complaint that complies with 47 CFR § 1.726. Any interrogatories posed by Alabama Power must be filed and served concurrently with the answer. 47 CFR § 1.730(a). Responses to any motions filed with the complaint should also be submitted with the answer.<sup>4</sup>

2) By **June 3, 2019**, AT&T must file and serve a reply to the answer that complies with 47 CFR § 1.728. Any second request for interrogatories posed by AT&T must be filed and served concurrently with its reply. 47 CFR § 1.730(a).

3) A party must file and serve any opposition and objections to the opposing party's interrogatories within 7 calendar days after service of the interrogatories. Any interrogatories to which no opposition or objection is raised must be answered within 20 days after service. 47 CFR § 1.730(c).

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<sup>2</sup> See also *Amendment of Procedural Rules Governing Formal Complaint Proceedings Delegated to the Enforcement Bureau*, Report and Order, 2018 WL 3495119 (2018) (*Rule Consolidation Order*); *Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to Be Followed when Formal Complaints Are Filed Against Common Carriers*, Report and Order, 12 FCC Rcd 22497 (1997) (*Formal Complaints Order*), Order on Reconsideration, 16 FCC Rcd 5681 (2001) (*Formal Complaints Recon Order*); *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure Relating to the Filing of Formal Complaints Under Section 208 of the Communications Act and Pole Attachment Complaints Under Section 224 of the Communications Act*, Order, 29 FCC Rcd 14078 (2014) (*Formal Complaints Amendment Order*). The rules governing this proceeding differ significantly from the Federal Rules of Civil Procedure. For example, the Commission requires parties to file fact-based pleadings. See *Formal Complaints Order*, 12 FCC Rcd at 54, para. 120, 47 C.F.R. §§ 1.721(b)-(d), (r), 1.726(b). Further, Section 208 proceedings "are generally resolved on a written record consisting of a complaint, answer, reply, and joint statement of stipulated facts, disputed facts and key legal issues, along with all associated evidence in the record." 47 CFR § 1.721.

<sup>3</sup> Staff has authority under Sections 0.111 and 0.311 of the Commission's rules, 47 CFR §§ 0.111, 0.311, to modify the filing deadlines and other requirements contained in the complaint rules as the circumstances of individual cases warrant and to the extent consistent with Section 1.740 of the rules, 47 CFR § 1.740. In addition, if a filing contains a citation to material that appears on the Internet, the filing must attach a hard copy of that material. See 47 CFR § 1.721(g), (k).

<sup>4</sup> Although motions to dismiss are permitted, they should be filed only in rare circumstances. 47 CFR § 1.729(d); *Rule Consolidation Order*, 2018 WL 3495119 \*4, paras. 13-14 ("[M]otions to dismiss are rarely warranted. The formal complaint rules "are designed so that a defendant's answer is a comprehensive pleading containing complete factual and legal analysis, including a thorough explanation of every ground for dismissing or denying the complaint." (quoting *Formal Complaints Recon Order*, 16 FCC Rcd at 5696); *Rule Consolidation Order*, 2018 WL 3495119 at \*5, para. 14 ("[W]e consider there to be few circumstances justifying the filing of a separate motion to dismiss. . .")).

4) The parties must meet to discuss the resolution or narrowing of as many issues as possible. Such discussions should include the following matters: settlement prospects, discovery, factual and legal issues in dispute, the case schedule, and the preparation of joint statements. *See* 47 CFR § 1.733(b). Based on these discussions, the parties should prepare joint statements of (a) stipulated facts, disputed facts, and key legal issues; and (b) all proposals agreed to and any disputes remaining regarding the matters listed in 47 CFR § 1.733(b)(1). The joint statements must be filed by **June 21, 2019**. The parties may submit these two joint statements in a single document if each is separately identified in the document. **We strongly encourage the parties to devote substantial effort to developing comprehensive and detailed joint statements.**<sup>5</sup>

5) An initial status conference in this proceeding will be scheduled after discussion with the parties on **July 17, 2019** at the Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. *See* 47 CFR § 1.733. Each party should include in the conference a client representative with knowledge of the central facts and authority to settle the dispute. After clearing security at the 12<sup>th</sup> Street entrance, the parties should call Lia Royle at (202) 418- 7391 to be escorted to the conference. *See* 47 CFR § 1.733. **The parties should be prepared to spend at least four hours in conference.**

6) We expect final action on the Complaint within 270 days of its filing. *See* 47 CFR § 1.740(a). The Enforcement Bureau has discretion to pause the 270-day review period where actions outside the Commission's control (such as settlement discussions or mediation) delay Commission review of the complaint or where the Bureau determines that the issues and record are particularly complex, necessitating additional time for discovery or briefing. *See* 47 CFR § 1.740(b); *Rule Consolidation Order*, 2018 WL 3495119 \*8, para. 23. In light of the 270-day review period, we will be disinclined to grant requests for deadline extensions, absent a showing of good cause. Further, tight deadlines will apply to any discovery and briefing that may be permitted in this matter, and discovery and briefing must be completed by **August 21, 2019**. The parties and their counsel should plan their schedules accordingly.

The parties must file a public version of all written submissions in this proceeding using the Commission's Electronic Comment Filing System (ECFS). All written submissions should (a) prominently contain the Proceeding Number and Bureau Id Number referenced above (*see, e.g.*, 47 CFR § 1.7), and (b) be addressed to the Commission Secretary. If a party seeks to file both a public version and a confidential version of a submission, it should file the public (redacted) version on ECFS and file the confidential (unredacted) version in hard copy form with the Office of the Commission Secretary. *See* 47 CFR § 1.731. In addition to filing the unredacted version with the Office of the Secretary, please leave at that office three additional unredacted hard copies marked as "Courtesy Staff Copies. EB-MDRD, 202-418-7330." *See* 47 U.S.C. § 154(i); 47 CFR § 1.734(e). The parties must serve all filings via e-mail, hand-delivery, or overnight delivery, together with proof of service. *See* 47 CFR § 1.734(f). Also, please email to Commission counsel for this proceeding courtesy copies of all filings (both public versions and confidential versions) in a format that permits full text searching, if possible. *See* 47 U.S.C. § 154(i); 47 CFR § 1.734(e). *See Formal Complaints Amendment Order*, 29 FCC Rcd at 14081, para. 11 (requiring parties to provide hard copies of submissions to Commission staff upon request).

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<sup>5</sup> *See Formal Complaints Recon Order*, 16 FCC Rcd at 5696-97.

This proceeding is restricted for *ex parte* purposes. See 47 CFR Part 1, Subpart H. Further, the parties are required to retain all records that may be relevant to the complaint, including electronic records, until the Commission's decision in this proceeding is final and no longer subject to judicial review. See 47 U.S.C. §§ 154(i), 208(a); 47 CFR § 42.7.

We issue this letter ruling under Sections 4(i), 4(j), and 224 of the Act, 47 U.S.C. §§ 154(i), 154(j), 208, Sections 1.3, 1.720-1.740 and 1.1401-1.1414 of the Commission's Rules, 47 CFR §§ 1.3, 1.720-1.740, and the authority delegated in Sections 0.111 and 0.311 of the Commission's Rules, 47 CFR §§ 0.111, 0.311.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read 'R H McEnery', with a large, stylized loop at the end.

Rosemary H. McEnery  
Chief, Market Disputes Resolution Division  
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rosemary.mcenery@fcc.gov